

Internal Revenue Service
Regional Commissioner
[REDACTED]

Department of the Treasury

Date: SEP 31 1982

Employer Identification Number:
[REDACTED]

Form Number:
[REDACTED]

Tax Years:
[REDACTED]

Key District:
[REDACTED]

Person to Contact:
[REDACTED]

Contact Telephone Number:
[REDACTED]

[REDACTED]
CERTIFIED MAIL

Gentlemen:

This is a final adverse determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code.

Our adverse determination was made for the following reason(s):

Your sole activity is the operation of bingo games with the stated intention of turning over any net receipts to charity. This is not an exempt function within the meaning of section 501(c)(3) of the Internal Revenue Code. Therefore, since you are not operated exclusively for one or more exempt purposes, you are not entitled to exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code.

Contributions to your organization are not deductible under Code section 170.

You are required to file Federal income tax returns on the form indicated above. Based on the financial information you furnished, it appears that returns should be filed for the above years. You should file these returns with your key District Director, EP/EO Division, within 30 days from the date of this letter, unless a request for an extension of time is granted. Processing of income tax returns and assessment of any taxes due will not be delayed because you have filed a petition for declaratory judgment under Code section 7428. You should file returns for later tax years with the appropriate service center shown in the instructions for those returns.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the district court of the United States for the District of Columbia must be filed within 90 days from the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment.

(over)

We will notify the appropriate State officials of this action, as required by Code section 6104(o).

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

/s/ [REDACTED]

[REDACTED]
Chief, Omaha Appeals Office

cc: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MAY 14 1982

Dear Applicant:

Your application for exemption from Federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code has been given consideration.

The evidence presented disclosed that you were incorporated on [REDACTED], under the [REDACTED] Nonprofit Corporation Act. Your stated purposes are charitable.

Your activities consist of running a bingo game to help support the athletic and music department of [REDACTED]. [REDACTED] is the incorporator, registered agent and the only director of the corporation. In your first year of operation you project \$[REDACTED] in gross receipts with \$[REDACTED] being distributed to charity and in your second year \$[REDACTED] in gross receipts with \$[REDACTED] to charity. You project \$[REDACTED] in both the first and second year of operation as a manager's salary.

Section 501(a) of the Internal Revenue Code of 1954 provides for the exemption of certain organizations described in subsection 501(c).

"(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

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Section 1.501(c)(3)-1 of the Income Tax Regulations relates to the definition of the organization and operation of organizations described in Section 501(c)(3). It reads, in part, as follows:

"An organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."

Section 1.501(c)(3)-1 of the Income Tax Regulations provides that, in order to be exempt as an organization described in Section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in that section. An organization is not operated exclusively for an exempt purpose if its primary activity is carrying on an unrelated trade or business.

In Kelp the Children, Inc. v. Commissioner, 28 TC 1128 (1957), the Court denied exemption to an organization whose principal activity was the profitable operation of bingo games on a business or commercial basis. During the two years of operation, only 1% of the organization's gross receipts were distributed for charity.

Internal Revenue Code Section 513 defines "unrelated trade or business" as, "...any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under Section 501..."

Internal Revenue Code Section 513(f), added by Public Law 95-502, excepts bingo games from the definition of unrelated trade or business. However, House Report 95-1608, (1978-51 IRB 23) on Public Law 95-502 provides, in part:

"Although the bill provides that, for political organizations and most tax-exempt organizations, the proceeds of certain bingo games are not generally subject to Federal income taxation, the committee does not intend that the carrying on of bingo games should be treated as an exempt function of a political organization or tax-exempt organization except to the extent it would be considered an exempt function under present law. Also, the committee does not intend to revise:

those rules of present law which indicate that if conducting bingo is a primary activity of an organization, the organization may not qualify for tax-exemption..."

The Code Section states, "No person receives or has any fixed or contingent right to receive, directly or indirectly, any profit, remuneration, or compensation from or related to a game of skill, game of chance or raffle, except any amount which the person may win as a participant on the same basis as the other participants. A person conducting a game or raffle shall not be a participant in the game or raffle."

Revenue Rule Section (Richards to Halvorson, State Representative, 12/19/80) states, "Wages or salaries are not legitimate expense deduction."

Section 513(f)(2)(B) and (C) of the Internal Revenue Code holds that the term "bingo game" means any game of bingo the conducting of which is not an activity ordinarily carried out on a commercial basis and the conducting of which does not violate any State or local law.

Your sole activity is the operation of a bingo parlor with the stated intention of turning over any excess funds to charity. All of your support will be received as a result of the bingo activity and substantially all of your disbursements will be for prizes and operating expenses. Only 6% to 10% of your total funds will be distributed to charities. Such minimal disbursements cannot be viewed as commensurate in scope with your financial resources.

We hold that you are not operated exclusively for one or more exempt purposes, and therefore, you are not entitled to exemption from Federal income tax as an organization described in Section 501(c)(3) of the Code.

You are required to file Federal income tax returns annually on Form 1120.

If you do not agree with these conclusions, you may, within 30 days from the date of this proposed adverse determination letter, appeal to the Regional Office through this Key District Office. Your appeal should contain the information described under Regional Office Appeal in the enclosed Publication 892, and should be mailed to this office. The Regional Office will let you know what action they take, and will set a date and place for any conference to be held. If a written protest is not received within the above time period this determination letter will be final.

Section 7428(b)(2) of the Internal Revenue Code provides, in part, that:

declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies.

This is a determination letter.

Sincerely yours,

District Director

Enclosure
Publication 892